

REMARKS

The Office action has been carefully considered. Claims 1-49 were pending in the application. The Office action rejected claims 1-4, 6-7, 9, 11, 14, 16-21, 25-32, 34-35, 38-44 and 46-49 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown"). Claims 5, 33 and 45 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 6,269,480 to Parthesarathy et al ("Parthesarathy"). Claims 8, 10, 13, 15 and 37 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 5,742,289 to Davis et al ("Davis"). Claims 12, 22 and 36 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 6,289,510 to Nakajima ("Nakajima"). And claims 23 and 24 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,867,713 to Shrader et al ("Shrader") and U.S. Patent 6,401,238 to Brown et al ("Brown") and U.S. Patent 5,933,646 to Hendrickson et al ("Hendrickson"). By the present amendment, claims 1-49 are canceled without prejudice, claims 50-98 have been added. Applicants submit that the present amendment is for purposes of more distinctly claiming that which applicants regard as their invention, and not for reasons related to patentability. Reconsideration is respectfully requested.

Applicants thanks the Examiner for the interview held (by telephone) on April 12, 2004. During the interview, the Examiner and applicant's attorney discussed the claims with respect to the prior art. The essence of applicant's position is incorporated in the remarks below.

Applicant's technique is generally directed to deploying software implementations, such as applications and other program components, when there is a potential or actual conflict among the software implementations that are specified (e.g., by administrators) to apply to a given user or machine. For example, network administrators may set policy objects to specify which programs and components apply to each user and machine, so that when a user logs on or a machine connects to the network, the user and machine automatically have appropriate programs and/or software components deployed thereto. Because different administrators can separately set the policies, and users and machines may belong to multiple, different groups to which policies apply, there may be a potential conflict among software implementations specified for deployment. By way of example, a user may belong to a finance group and an accounting group; if one policy specifies that the finance group is to use word processor X and another policy specifies that the accounting group is to use word processor Y, both applications may apply to that user. Rather than deploy both to a given machine to which the user has logged on, the present invention provides precedence information to handle the conflict, via defined precedence relationships between these applications, e.g., precedence data can specify to install word processor X and not word processor Y in the event both

apply. Note that X and Y may be different versions of the same general program, and thus the present invention facilitates lifecycle management of software implementations. Further, note that the above summary is for example and informational purposes only and should not be used to interpret the claims, which are discussed below.

In addition to further subject matter recited, newly added claim 50 recites "maintaining policy information of which one of a plurality of software implementations to apply to the client, maintaining precedence information at a network location indicative of precedence relationships between software implementations" and "determining from the precedence information whether the selected software implementation has precedence over at least one other software implementation that is also specified for deployment to the client. In reference to canceled claim 1, the Office action alleges that Shrader discloses a method for determining a set of software implementations to deploy to a client using an installation plan object and customization plan object, but concedes that Shrader does not disclose maintaining precedence information at a network location indicative of precedence relationships between software implementations. However, the Office action also contends that Brown does disclose this feature by interpreting precedence in user priority to mean the same as precedence between software implementations. Applicants submit that such an interpretation is in contradiction of the plain meaning of the words "precedence information at a network location indicative of precedence relationships between software implementations." Notwithstanding, the Office

action further makes the unsupported conclusory remark that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify, Shrader with Brown to implement applicants' invention. Such a combination, even if somehow permissible, could not possibly implement applicants' invention, nor applicants' invention as presently claimed. Such a combination, even if somehow permissibly accomplished, would merely appear to yield Shrader's validation system that could verify an object-based installation plan for applications based upon a user's priority or adding prerequisite child objects of an application to Shrader's installation plan based upon a user's priority. Given the result of such a questionable combination, it is not surprising that neither Shrader nor Brown provide any motivation for such a combination. Indeed, the motivation for Shrader's validation system for installation plans is to help an administrator plan the physical tasks of network installation by decomposing the network installation and configuration planning process so that administrators can set-up and view the applications that are slated to be installed and configured on a set of workstations. Nowhere in Shrader is there any mention or suggestion of user priority, installation by user priority or verification of an installation plan by user priority for the set of workstations.

In particular, Shrader is directed to a validation system that verifies an object-based installation plan for applications. As noted by the Examiner, Shrader does not teach maintaining precedence information between software implementations. Nor does Shrader teach determining from the precedence information which one of the plurality of software implementations to apply.

Significantly, as part of validation, Shrader may have to add prerequisite child objects of an application to an installation plan, but clearly does not teach or suggest making any “selection” between which of two (or more) objects to add to the plan and which to not add, let alone do so based on anything even remotely resembling an established precedence relationship between such objects.

Brown, on the other hand, is directed to selecting and deploying one of several tuned versions of an application based upon network conditions such as network load, bandwidth utilization and time-of-day. Brown does not teach maintaining precedence information between software implementations. Nor does Brown teach determining from the precedence information which one of the plurality of software implementations to apply. Significantly, Brown instead determines which of a given set of application versions may be served to a client based upon the user’s priority for obtaining a given version of an application. Brown may maintain priority information between users but clearly does not teach or suggest maintaining precedence information between software implementations. Nor does Brown teach determining from the precedence information between software implementations which one of the application versions to apply. Significantly, Brown selects an application version based upon user priority, not precedence information between software implementations.

Moreover, neither Shrader nor Brown disclose the additional recitations of “determining from the plurality of group policies at least one of the plurality of software implementations to apply to the client” and “determining from the

precedence information whether the selected software implementation has precedence over at least one other software implementation that is also specified for deployment to the client,” in newly added claim 50. In applicants’ invention, users and machines may belong to multiple, different groups to which policies may apply. Shrader, on the other hand, only discloses several installation plans for a set of workstations that have been verified for installation. Shrader does not disclose a plurality of group policies of which a client may be a member, nor does Shrader disclose determining whether a software implementation selected from a plurality of software implementation specified by a plurality of group policies has precedence over at least one other software implementation that is also specified for deployment to the client. Likewise, Brown does not disclose a plurality of group policies of which a client may be a member, nor does Brown disclose determining from precedence information whether a software implementation selected from a plurality of software implementation specified by a plurality of group policies has precedence over at least one other software implementation that is also specified for deployment to the client.

Applicants respectfully submit that newly added dependent claims 51-65, newly added independent claim 66 and its dependent claims 67-78, newly added claim 79 and its dependent claims 80-92, and newly added claims 93-98, by similar analysis, are not anticipated by Shrader or Brown. Dependent claims 51-65 include the recitations of claim 50 which none of the relied-upon references, whether considered alone or in any permissible combination, disclose as discussed above. Among additional subject matter recited, claims 66-78 include

the recitations of “maintaining policy information for several groups of clients at a network location including software implementations to deploy to each group of clients,” “receiving a request to deploy a plurality of software implementations to a client belonging to at least two groups,” and “determining for at least one software implementation in the request to apply another software implementation to the client based on the precedence relationships” Among additional subject matter recited, claims 79-92 include the recitations of “maintaining first data specifying that a first software implementation is desired to be deployed to a client, maintaining second data specifying that a second software implementation is desired to be deployed to the client,” and “maintaining precedence information specifying a precedence relationship between the first software implementation and the second software implementation.” And finally, among additional subject matter recited, claims 93-98 include the recitations of “maintaining policy information specifying at least one software implementation for deployment to a first group of clients, maintaining policy information specifying at least one software implementation for deployment to a second group of clients,” and “accessing the precedence information to determine which software implementation to select for deployment to a client belonging to both the first group of clients and the second group of clients.” None of the references alleged as prior art to the canceled claims discloses the concept of a plurality of group policies of which a client may be a member, or discloses substantially similar recitations as included in claims 67-98. Nor do these references disclose the concept of specifying a precedence relationship between software

implementations used to determine whether a software implementation specified by a plurality of group policies has precedence over at least one other software implementation that is also specified for deployment to a client, or disclose substantially similar recitations as included in claims 67-98.

Nowhere in Shrader or Brown is there a description of specifying a precedence relationship between a first software implementation and a second software implementation. As noted previously, Brown discusses which of a given set of users have priority for obtaining a given version of an application, not which software implementation may have a precedence relationship to another software implementation. None of the other prior art of record teaches or discloses maintaining precedence information between software implementations. Applicants submit that the claims are patentable over Shrader and any of the other prior art of record for at least the reasons set forth above, e.g., like Shrader, none of the other prior art of record discloses, suggests or provides any motivation for handling the selective deployment of one software implementation over another, based on precedence information, when a plurality of software implementations are specified for deployment. In making the §103(a) rejections of the canceled claims, applicants note that the Office action has again confused dependency with precedence, which are distinct concepts. And the Office action has again confused priority information between users with precedence information between software implementations, which are also distinct concepts. Thus, even if somehow permissible to combine Shrader with Parthesarathy, Davis, Nakajima and/or Henderickson, the newly added claims,

(as well as the canceled claims, for that matter) are not reached, as by law, in order to establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In addition, "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Further, considering the §103(a) rejections for the canceled claims as a whole, it appears that the Office has relied on applicants' teachings in a (failed) attempt to reconstruct applicants' invention. For example, instead of pointing out where some motivation to combine exists, the Office action merely makes unsupported conclusory statements based on applicants' teachings; e.g., in rejecting claim 5, the Office action refers to "advertising" even though advertising as defined and claimed (as a software implementation available for execution prior to actual installation) is not considered in Parthesarathy, nor does it meet the definition used in the Office action. Similarly, in rejecting claim 11, the Office action again confuses priority between users with a precedence relationship between software (in the present invention, data about the precedence relationship between software is used to determine which software implementation to install, and not user priority). Davis (column 14, lines 7-10) simply deletes files prior to an update; no precedence information is accessed. Nakajima (column 7, lines 5-10) is directed to tracking file installation states, not specifying what to do with files, let alone any precedence-based behavior.

Henderickson refers to deinstallation, but is essentially silent as to how this is done, other than based on user specified changes.

For a combination of prior art references to render an invention obvious, there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. *In re Oetiker*, 977 F.2d 1443, 1447, 24 USPQ2d 1443, 1446 (Fed. Cir. 1992). A finding of obviousness on any other basis would constitute impermissible hindsight. See *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). Otherwise, combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of impermissible hindsight. *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

In the present application, the Office action has essentially done what is not proper by law, and used applicants' teachings as a blueprint, using an (incorrectly) modified Shrader for some of the claimed limitations, and, without any specific evidence of motivation to combine, has hunted for other references that might supply the limitations present in the application but missing from Shrader. Instead of presenting any specific evidence of motivation to combine, the Office action has only made unsupported conclusory statements that are wholly unrelated to the claims in order to allege obviousness. However, such broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of obviousness. *Id.*

In re application of BLANDING ET AL.
Serial No. 09/293,326

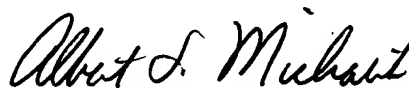
For at least these additional reasons, applicants submit that the newly added claims are patentable over the prior art of record, whether considered alone or in any permissible combination, and respectfully request reconsideration and withdrawal of the rejections based thereon.

CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that claims 50-98 are patentable over the prior art of record, and that the application is good and proper form for allowance. A favorable action on the part of the Examiner is earnestly solicited.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at (425) 836-3030.

Respectfully submitted,



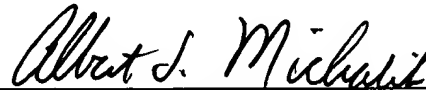
Albert S. Michalik, Reg. No. 37,395
Attorney for Applicants
Law Offices of Albert S. Michalik, PLLC
704 - 228th Avenue NE, Suite 193
Sammamish, WA 98074
(425) 836-3030
(425) 836-8957 (facsimile)

In re application of BLANDING ET AL.
Serial No. 09/293,326

CERTIFICATE OF MAILING

I hereby certify that this Amendment and Petition for Extension of Time,
along with Transmittal are being deposited with the United States Postal Service
on the date shown below with sufficient postage as First Class Mail in an
envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450.

Date: June 30, 2004



Albert S. Michalik

1650 Third Amendment